

TENTATIVE RULINGS for CIVIL LAW and MOTION

July 14, 2010

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at www.yolo.courts.ca.gov. If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Fourteen: (530) 406-6941

TENTATIVE RULING

Case: **Beneficial California, Inc. v. Tafoya**
Case No. CV G 09-1724

Hearing Date: **July 14, 2010** **Department Fourteen** **9:00 a.m.**

Plaintiff's unopposed motion for summary judgment is **DENIED**. (*Dept. of Indus. Relations v. UI Video Stores, Inc.* (1997) 55 Cal.App.4th 1084, 1097; Weil & Brown, Calif. Practice Guide: Civil Proc. Before Trial (The Rutter Group 2009) ¶ 10:50.1.) The amount of the plaintiff's damages has not been established. It appears, from the amended complaint and the declaration of Rosalind Miller, that the defendant owes the plaintiff an amount less than what is stated in paragraph 5 of Ms. Miller's declaration. (First amended complaint ¶ BC-4; Miller Declaration ¶ 10.) Plaintiff does not state what amount the defendant owes after applying the defendant's June and August, 2009, payments.

Plaintiff is directed to prepare a formal order consistent with this ruling and in accordance with Code of Civil Procedure section 437c, subdivision (g) and California Rules of Court, rule 3.1312.

TENTATIVE RULING

Case: **Jamal, LLC v. Smith**
Case No. CV CV 03-300

Hearing Date: **July 14, 2010** **Department Fourteen** **9:00 a.m.**

Young J. Paik and Sue K. Paik, individually and as Trustees of the Young J. Paik Family Trust's motion for attorney's fees on appeal no. C057850 is **GRANTED** in the amount of \$75,439.50. (Cal. Rules of Court, rules 3.1702(c); 8.278(c)(1); *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095; Dec. of Fairbrook; Dec. of Bell; Dec. of Moore.)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **Karpekin v. Klimushkin**
Case No. CV CV 09-3099
Hearing Date: **July 14, 2010** **Department Fourteen** **9:00 a.m.**

Defendant's motion to set aside the entry of default against him is **DENIED**. Defendant admits that he was personally served with the complaint on December 2, 2009. (Klimushkin Declaration ¶ 4.) Defendant states that he thought the complaint was part of the small claims case that defendant filed against plaintiff, and that the complaint would be "taken care of" at the January 12, 2010, hearing for the small claims case. (Klimushkin Declaration ¶ 5.) Defendant states that he mistakenly did not know that he needed to file anything in response to the complaint. (Klimushkin Declaration ¶ 5.) Defendant does not state the basis for his mistaken belief. Defendant does not state that he was unaware of the content of the summons. If defendant read the summons he would have known that he had to respond to the complaint within 30 days of December 2, 2009. If defendant did not read the summons, he did so at his own peril. (*Garner v. Erlanger* (1890) 86 Cal. 60, 63.)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **Leach v. Regents of the University of California**
Case No. CV CV 08-2731
Hearing Date: **July 14, 2010** **Department Fourteen** **9:00 a.m.**

This matter is **CONTINUED** on the court's own motion to Friday, July 30, 2010, at 9:00 a.m. in Department Fifteen.

TENTATIVE RULING

Case: **Mathews v. Mathews**
Case No. CV CV 05-1303
Hearing: **July 14, 2010** **Department Fourteen** **9:00 a.m.**

Plaintiff's motion for trial preference is **DENIED**. When a non-Doe defendant is added by amended complaint, the five-year period commences on filing of the amended pleading. (Calif. Civil Proc. Before Trial (4th ed. Cont.Ed.Bar 2004) §39.26.) John Mounier and The Mounier Law Firm were added as defendants when the plaintiff filed his first amended and supplemental complaint on January 4, 2007. There is no danger of mandatory dismissal if trial preference is denied. Additionally, plaintiff failed to establish good cause for his delay in bringing his motion for trial preference.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: Northern California Collection Service, Inc. v. Russell
Case No. CV G 09-2489

Hearing Date: July 14, 2010 **Department Fourteen** **9:00 a.m**

Charles Russell's unopposed motion to set aside the entry of default and default judgment is **GRANTED**. (Code Civ. Proc., § 473, subd. (b).) The Clerk erroneously filed the defendant's proposed answer on June 25, 2010. The Clerk shall strike the June 25, 2010, "Filed" stamp on the answer the defendant submitted and file the answer as of July 14, 2010.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: Pinewood Court Apartments v. USA Properties Fund, Inc.
Case No. CV CV 08-2988

Hearing Date: July 14, 2010 **Department Fourteen** **9:00 a.m.**

Defendant CJS Plumbing, Inc.'s motion to compel further responses to special interrogatories, set one is **DENIED**. (Code Civ. Proc., §§ 1013, 2030.300, subd. (c); *Sharp v. Union Pacific RR Co.* (1992) 8 Cal.App.4th 357, 360.) Effective service requires strict compliance with Code of Civil Procedure section 1013. Service by fax without an agreement is the equivalent of no service at all. (*Id.*) There is no evidence before the Court of a written agreement to accept service by facsimile transmission. (Code Civ. Proc., § 1013.) Thus, service of the further responses to the special interrogatories was ineffective and the date to file the motion to compel was March 15, 2010, per agreement of the parties. (Dec. of Sandeep G. Agarwal, ¶¶ 1-12. Exhibits A-J.) Moreover, even if the motion was timely filed, the Court finds that the responses are adequate and no further responses are required.

Defendant/Cross-Complainant Pacific West Fire Protection Group, Inc.'s request for sanctions is **GRANTED**. CJS Plumbing, Inc. shall pay Pacific West Fire Protection Group, Inc. \$870.00 by July 28, 2010. As Defendant's request for attorney's fees incurred for attendance at the hearing are estimated and prospective, they are not included in the sanctions award.

If no hearing is requested, the tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **People v. Leon**
 Case No. CV PT 10-1465

Hearing Date: **July 14, 2010** **Department Fourteen** **9:00 a.m.**

The People are directed to appear to advise the Court about whether the People intend to file a petition for forfeiture and of any related, pending criminal action. A judgment of forfeiture against Ms. Leon requires, as a condition precedent thereto, that a defendant be convicted in an underlying or related criminal action of an offense specified in Health and Safety Code section 11470, subdivision (f) which offense occurred within five years of the seizure of the property subject to forfeiture or within five years of the notice of intent to seek forfeiture. (Health and Safety Code, § 11488.4, subd. (i)(3).)